

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MELISSA ANN MARQUEZ MOYA,

Plaintiff,

vs.

Civ. No. 24-cv-00134 SCY

**LELAND DUDEK,
Acting Commissioner of the
Social Security Administration,¹**

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR ATTORNEY FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

The Court, having reviewed the parties' Unopposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (Doc. 22), HEREBY ORDERS that attorney fees be, and hereby are, awarded under the EAJA, payable to Plaintiff but delivered to Plaintiff's attorney, Katherine Hartung O'Neal of O'Neal Appellate Law, LLC, in the amount of \$7,308.00 in attorney fees. *See Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney). Plaintiff shall also be awarded the \$405.00 filing fee payable to the Plaintiff's attorney, which is to be paid from the Department of Justice's Judgment Fund, 28 U.S.C. § 2412, not agency funds.

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

¹ Acting Commissioner Dudek was appointed as the Acting Commissioner of the Social Security Administration ("SSA") on February 17, 2025, and is automatically substituted as the defendant in this action. Fed. R. Civ. P. 25(d).

The award is subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).



JUDGE STEVEN C. YARBROUGH

SUBMITTED AND APPROVED BY:

Filed Electronically 4/28/2025

Katherine H. O'Neal
Attorney for Plaintiff
O'Neal Appellate Law, LLC

Electronically Approved 4/28/2025

James Burgess
Special Assistant U.S. Attorney
Attorney for Defendant